(2) For the purposes of this rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. "Client" includes any prospective client.

3. "Impersonal advisory services" means investment advisory services provided solely by means of written materials or oral statements which do not purport to meet the objectives or needs of the specific client, statistical information containing no expressions of opinions as to the investment merits of particular securities, or any combination of the foregoing services.

(3) The investment adviser shall retain a copy of each written agreement required by this rule as a part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(4) The investment adviser shall retain a copy of each acknowledgment and solicitor disclosure document referred to in this rule as part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(5) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of 50.103(2)"*f*"(3) or 50.103(2)"*f*"(4) if such investment adviser:

1. Is registered or licensed as an investment adviser in the state in which the adviser maintains the adviser's principal place of business;

2. Is in compliance with the applicable books and records requirements of the state in which the adviser maintains the adviser's principal place of business; and

3. The provisions of this rule would require the investment adviser to maintain books or records in addition to those required by the laws of the state in which the investment adviser maintains the adviser's principal place of business.

(6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

This rule is intended to implement Iowa Code chapter 502.

**191—50.104(502) Unethical business practices of investment advisers, and investment adviser representatives, or fraudulent or deceptive conduct by federal covered advisers.**

**50.104(1)** A person who is an investment adviser, an investment adviser representative, or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the adviser's clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise not permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of each relationship and the circumstances of each case, an investment adviser and an investment adviser representative shall not engage in unethical business practices, and a federal covered adviser shall not engage in fraudulent or deceptive conduct, including the following:

*a.* Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

*b.* Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

*c.* Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if the adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

*d.* Placing an order to purchase or sell a security for the account of a client without authority to do so.

*e.* Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

*f.* Borrowing money or securities from a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

*g.* Loaning money to a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

*h.* Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or the fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made.

*i.* Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

*j.* Charging a client an advisory fee that is unreasonable. The following nonexclusive list of factors may be considered in determining whether a fee is unreasonable: the type(s) of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

*k.* Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of the adviser's employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or the adviser's employees.

*l.* Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

*m.* Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

*n.* Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

*o.* Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

*p.* Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

*q.* Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information as required by 16 CFR 313.

*r.* Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under Iowa Code chapter 502 notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

*s.* Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Iowa Code chapter 502 or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

*t.* Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

*u.* Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

**50.104(2)** The conduct set forth in subrule 50.104(1) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290).

This rule is intended to implement Iowa Code chapter 502.

**191—50.105(502) Custody of client funds or securities.**

**50.105(1)** It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

*a.* The investment adviser notifies the administrator in writing that the investment adviser has or may have custody;

*b.* The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place free from risk of destruction or other loss;

*c.* All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the accounts, and the exact amount of each client's beneficial interest in the account;

*d.* Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and, subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

*e.* At least once every three months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

*f.* At least once every calendar year, an independent certified public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each examination. The effective date of this paragraph shall be June 9, 2000.

*g.* For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

**50.105(2)** Reserved.

This rule is intended to implement Iowa Code chapter 502.

**191—50.106(502) Minimum financial requirements for investment advisers.**

**50.106(1)** Except as otherwise provided in subrule 50.106(7), an investment adviser registered or required to be registered under Iowa Code section 502.302 who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser registered or required to be registered under Iowa Code section 502.302 who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.

**50.106(2)** Except as otherwise provided in subrule 50.106(7), an investment adviser registered or required to be registered under Iowa Code section 502.302 who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

**50.106(3)** Except as otherwise provided in subrule 50.106(7), or unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under Iowa Code section 502.302 shall by the close of business on the next business day notify the administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of the adviser's financial condition, including the following:

*a.* A trial balance of all ledger accounts;

*b.* A statement of all client funds or securities which are not segregated;

*c.* A computation of the aggregate amount of client ledger debit balances; and

*d.* A statement as to the number of client accounts.

**50.106(4)** For the purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include the following as assets: prepaid expenses (except items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

**50.106(5)** For the purposes of this rule, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

**50.106(6)** The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

**50.106(7)** Every investment adviser whose principal place of business is in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains the adviser's principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

The effective date of this rule shall be June 23, 2000.

This rule is intended to implement Iowa Code section 502.302.

**191—50.107(502) Bonding requirements for certain investment advisers.**

**50.107(1)** Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

*a.* Every investment adviser registered or required to be registered under Iowa Code section 502.302 having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser.

*b.* Every investment adviser registered or required to be registered under Iowa Code section 502.302 who has custody of or discretionary authority over client funds or securities and who does not meet the minimum net worth standard in subrule 50.106(1) shall be bonded in the amount of net worth deficiency rounded up to the nearest $5000.

**50.107(2)** An investment adviser whose principal place of business is in a state other than this state shall be exempt from the requirements of subrule 50.107(1), provided that the investment adviser is registered as an investment adviser in the state of the adviser's principal place of business and is in compliance with such state's requirements related to bonding.

The effective date of this rule shall be June 23, 2000.

This rule is intended to implement Iowa Code section 502.302.

**191—50.108(502) Record-keeping requirements for investment advisers.**

**50.108(1)** Except as otherwise provided in subrule 50.108(12) for out-of-state investment advisers, every investment adviser registered or required to be registered under Iowa Code chapter 502 shall make and keep true, accurate and current the following books, ledgers and records:

*a.* A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

*b.* General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

*c.* A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

*d.* All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

*e.* All bills or statements (or copies of all bills or statements), paid or unpaid, relating to the investment adviser's business as an investment adviser.

*f.* All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation.

*g.* Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given,

(2) Any receipt, disbursement or delivery of funds or securities, or

(3) The placing or execution of any order to purchase or sell any security.

The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser. If the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

*h.* A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

*i.* A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

*j.* A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

*k.* A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

*l.* A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"l,"* "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(4) For the purposes of 50.108(1)*"l,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"l"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

*m.* Notwithstanding the provisions of 50.108(1)*"l,"* when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"m,"* an investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of the adviser's most recent three fiscal years or for the period of time since organization, whichever is the lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of the adviser's total sales and revenues, and the adviser's income or loss before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of 50.108(1)*"m,"* "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

(5) For the purposes of 50.108(1)*"m,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(6) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"m"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

*n.* A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Iowa Code chapter 502 and these rules, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

*o.* For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(1) Evidence of a written agreement as required by 50.103(1)*"b"* to which the adviser is a party related to the payment of such fee;

(2) A signed and dated acknowledgment of receipt from the client as required by 50.103(1)*"c"*(3)"2" that evidences the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement as required by 50.103(1)*"c"*(3)"1." The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 206(4)-3 of the Investment Advisers Act of 1940.

(4) For purposes of 50.108(1)*"o,"* the term "solicitor" shall mean any person or entity that, for compensation, acts as an agent of an investment adviser in referring potential clients.

*p.* All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

*q.* A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

*r.* Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

*s.* Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

*t.* A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in 50.108(1)*"l"*(3), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

**50.108(2)** If an investment adviser subject to subrule 50.108(1) has custody or possession of securities or funds of any client, the records required to be made and kept under subrule 50.108(1) shall include:

*a.* A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

*b.* A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

*c.* Copies of confirmations of all transactions effected by or for the account of any client.

*d.* A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

**50.108(3)** Every investment adviser subject to subrule 50.108(1) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

*a.* Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

*b.* For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

**50.108(4)** Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

**50.108(5)** Every investment adviser subject to subrule 50.108(1) shall preserve the following records in the manner prescribed:

*a.* All books and records required to be made under the provisions of paragraphs 50.108(1)*"a"* to 50.108(3)*"a,"* inclusive, except for books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

*b.* Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

*c.* Books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p"* shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media).

*d.* Books and records required to be made under the provisions of 50.108(1)*"q"* to *"t,"* inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

*e.* Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) Records required to be preserved under 50.108(1)*"c," "g"* to *"j," "n"* to *"o,"* and *"q"* to "s," subrule 50.108(2) and subrule 50.108(3), and

(2) The records or copies required under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in 50.108(5)*"c."*

**50.108(6)** An investment adviser subject to subrule 50.108(1), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing on Form ADV-W of the exact address where the books and records will be maintained during the period.

**50.108(7)** The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photographic film or, as provided in subrule 50.108(8), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

*a.* Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

*b.* Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator through the administrator's examiners or other representatives may request;

*c.* Store separately from the original one other copy of the film or computer storage medium for the time required;

*d.* With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

*e.* With respect to records stored on photographic film, at all times have available for the administrator's examination the adviser's records, pursuant to Iowa Code section 502.303, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

**50.108(8)** Pursuant to subrule 50.108(7), an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

**50.108(9)** For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

**50.108(10)** For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

**50.108(11)** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

**50.108(12)** Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

**191—50.109(502) Examination requirements.**

**50.109(1)** A person applying to be registered as an investment adviser representative under the Act shall provide the administrator with proof that the person has obtained a passing score on one of the following examination requirements:

*a.* The Uniform Investment Adviser Law Examination (Series 65 examination) as implemented January 1, 2000; or

*b.* The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination) as implemented January 1, 2000.

**50.109(2)** The following shall also apply:

*a.* Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on or before January 19, 2000, shall not be required to satisfy the examination requirements for continued registration.

*b.* Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States after the effective date of these rules shall not be required to satisfy the examination requirements for continued registration, provided that the jurisdiction in which the investment adviser or investment adviser representative is registered required the passage of the examinations in subrule 50.109(1).

*c.* An individual who has not been registered as an investment adviser or investment adviser representative in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

*d.* The administrator may require additional examinations for any individual found to have violated the uniform securities Act.

**50.109(3)** The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

*a.* Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

*b.* Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

*c.* Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

*d.* Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

*e.* Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

*f.* Such other professional designation as the administrator may by order recognize.

This rule is intended to implement Iowa Code sections 502.302 and 502.305.

**191—50.110(502) Waivers.** Rescinded IAB 6/13/01, effective 7/18/01.

**191—50.111** to **50.119** Reserved.

VIATICAL SETTLEMENT CONTRACTS

**191—50.120(502) Advertising of viatical settlement contracts.**

**50.120(1)** Under this rule, the term "advertisement" includes any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published in connection with the offer or sale of a viatical settlement contract.

**50.120(2)** The issuer and agent shall file all viatical settlement contract advertisements with the administrator not less than ten business days prior to the date of use or a shorter period as the administrator may permit. The administrator shall mark the advertisements with allowance for use or expressly disapprove them during this time frame. The advertisement shall not be used in Iowa until a copy thereof, marked with allowance for use, has been received from the administrator.

**50.120(3)** Viatical settlement contract advertisements should contain no more than the following:

*a.* The name of the issuer;

*b.* The address and telephone number of the issuer;

*c.* A brief description of the security, including minimum purchase requirements and liquidity aspects;

*d.* If rate of return is advertised, it must be stated as the annual average rate of return, with a disclaimer that this is an annual average rate of return, that individual investor rates of return will vary based upon the viator's projected and actual date of death, and that an annual rate of return on a viatical settlement contract cannot be guaranteed;

*e.* The name, address and telephone number of the agent of the issuer authorized to sell the viatical settlement contracts;

*f.* A statement that the advertisement is neither an offer to sell nor a solicitation of an offer to purchase and that any offer or solicitation may only be made by providing a disclosure document; and

*g.* How a copy of the disclosure document may be obtained.

**50.120(4)** Notwithstanding the provisions of rule 191—50.25(502), certain viatical settlement advertisements may be deemed false and misleading on their face by the administrator and are prohibited under Iowa Code sections 502.401 and 502.602. False and misleading viatical settlement advertisements include, but are not limited to, the following representations:

*a.* "Fully secured," "100% secured," "fully insured," "secure," "safe," "backed by rated insurance company(ies)," "backed by federal law," "backed by state law," or similar representations;

*b.* "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

*c.* "Qualified or approved for IRA, Roth IRA, 401K, SEP, 403B, Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;

*d.* "Guaranteed fixed return," "guaranteed annual return," "guaranteed principal," "guaranteed earnings," "guaranteed profits," "guaranteed investment," or similar representations;

*e.* "No sales charges or fees," or similar representations;

*f.* "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

*g.* "Perfect investment," "proven investment," or similar representations;

*h.* Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

**191—50.121(502) Application by viatical settlement contract issuers and registration of agents to sell viatical settlement contracts.**

**50.121(1)** Under this rule, the term "viatical settlement contract issuer" includes, but is not limited to, any individual, company, corporation or other entity that offers or sells, directly or indirectly, viatical settlement contracts to investors.

**50.121(2)** A viatical settlement contract issuer employing agents in Iowa must make prior application to the administrator for this authority. The application shall be made by letter and shall include:

*a.* A statement of the issuer's intent to employ agents for the sale of its viatical settlement contracts; and

*b.* Name, address, social security number and proof of satisfaction of subrule 50.121(3) for each agent.

**50.121(3)** An applicant for registration as an Iowa-licensed agent of an issuer of viatical settlement contracts shall file with the administrator:

*a.* Proof of obtaining a passing grade on the NASD Series 7 examination;

*b.* Proof of obtaining a passing grade on the NASD Series 63 examination;

*c.* An accurate, complete and signed Form U-4; and

*d.* A $30 filing fee.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

**191—50.122(502) Risk disclosure.** Viatical settlement contract issuers and registered agents of issuers must provide specific, written disclosures of risk to Iowa investors at the time of the initial offer to sell a viatical settlement contract. These disclosures must be preceded by the following caption, which must be in bold, 16-point typeface:

**IMPORTANT RISK DISCLOSURE INFORMATION—READ BEFORE SIGNING ANY VIATICAL SETTLEMENT CONTRACT**

Certain items must be disclosed including, but not limited to, the following:

1. That the actual annual rate of return on any viatical settlement contract is dependent upon (a) an accurate projection of the viator's life expectancy, and (b) the actual date of the viator's death. An annual "guaranteed" rate of return is not possible;

2. Whether, after purchasing the viatical settlement contract, the investor will be responsible for payment of premiums on the contract if the viator lives longer than projected. If the investor will be responsible for such premiums, the amount of the premium payment and its negative effect on the investor's return must be disclosed to the investor;

3. Whether any premium payments on the contract have been escrowed. The investor must be provided the date upon which the escrowed funds will be depleted, informed whether the investor will be responsible for payment of premiums thereafter, and informed of the amount of such premiums;

4. Whether any premium payments on the contract have been waived. The investor must be informed whether the investor will be responsible for payment of the premiums if the insurer who wrote the policy terminates the waiver after purchase, and informed of the amount of such premiums;

5. Whether the investor is responsible for payment of premiums on the contract if the viator returns to health, and the amount of such premiums;

6. Whether the investor is entitled to all or part of the investor's investment under the contract if the viator's underlying policy is later determined to be null and void;

7. Whether the insurance policy is a group policy and, if so, the special risks associated with group policies including, but not limited to, whether the investor is responsible for payment of additional premiums if the policies are sold or converted;

8. Whether the insurance policy is term insurance and, if so, the special risks associated with term insurance including, but not limited to, whether the investor is responsible for additional premium costs if the viator continues the term policy at the end of the current term;

9. Whether the investor will be the beneficiary or owner of the insurance policy and, if the investor is the beneficiary, the special risks associated with beneficiary status;

10. Whether the insurance policy is contestable and, if so, the special risks associated with contestability including, but not limited to, the risk that the investor will have no claim or only a partial claim to death benefits should the insurer cancel the policy within the contestability period;

11. Who is making the projection of the viator's life expectancy, the information this projection is based upon, and the relationship of the projection maker to the issuer;

12. Who is monitoring the viator's condition, how often the monitoring is done, how the date of death is determined, and how and when this information will be transmitted to the investor;

13. Whether the insurer who wrote the viator's underlying policy has any additional rights which could negatively affect or extinguish the investor's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated;

14. That a viatical settlement contract is not a liquid investment and that there is no established secondary market for resale of these products by the investor;

15. That the investor will receive no returns (i.e., dividends and interest) until the viator dies; and

16. That the investor may lose all benefits or receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

**191—50.123(502) Duty to disclose.** Issuers and agents equally share an affirmative duty to disclose all relevant and material information to prospective investors in viatical settlement contracts. The required disclosure is the registration statement required by Iowa Code section 502.207 which has been reviewed and made effective by the administrator.

This rule is intended to implement Iowa Code section 502.201 and Iowa Code Supplement sections 502.102 and 502.202.

**191—50.124(502) Waivers.** Rescinded IAB 6/13/01, effective 7/18/01.

[Filed 8/1/63; amended 5/18/71, 7/3/75]
[Filed 1/13/76, Notice 11/17/75—published 1/26/76, effective 3/1/76*]
[Filed 8/30/76, Notice 7/26/76—published 9/8/76, effective 10/13/76]
[Filed 12/30/82, Notice 10/27/82—published 1/19/83, effective 2/24/83]
[Filed emergency 7/15/83—published 8/3/83, effective 7/15/83]
[Filed 8/27/85, Notice 7/17/85—published 9/25/85, effective 10/30/85]
[Editorially transferred from [510] to [191], IAC Supp. 10/22/86; see IAB 7/30/86]
[Filed 10/17/86, Notice 9/10/86—published 11/5/86, effective 12/10/86]◊
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 12/28/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed emergency 6/24/88—published 7/13/88, effective 7/1/88]
[Filed emergency 9/30/88—published 10/19/88, effective 11/1/88]
[Filed 12/22/88, Notice 11/16/88—published 1/11/89, effective 2/15/89]
[Filed 9/29/89, Notice 7/12/89—published 10/18/89, effective 11/22/89]
[Filed 12/21/90, Notice 6/27/90—published 1/9/91, effective 2/13/91]
[Filed emergency 6/21/91—published 7/10/91, effective 6/21/91]◊
[Filed 2/14/92, Notice 12/25/91—published 3/4/92, effective 4/8/92]
[Filed 2/28/92, Notice 12/11/91—published 3/18/92, effective 4/22/92]
[Filed 2/28/92, Notice 12/25/91—published 3/18/92, effective 4/22/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]◊
[Filed 4/30/93, Notice 3/17/93—published 5/26/93, effective 6/30/93]
[Filed 7/2/93, Notice 4/14/93—published 7/21/93, effective 8/25/93]
[Filed 12/30/93, Notice 7/21/93—published 1/19/94, effective 2/28/94]
[Filed 9/16/94, Notice 8/3/94—published 10/12/94, effective 11/16/94]
[Filed without Notice 10/20/94—published 11/9/94, effective 12/14/94]
[Filed 3/24/95, Notice 2/15/95—published 4/12/95, effective 5/17/95]
[Filed 6/16/95, Notice 2/15/95—published 7/5/95, effective 8/9/95]

*Objection to rules 50.19 and 50.44, see IAC Supplement 3/8/76
◊Two ARCs

[Filed 2/22/96, Notice 1/17/96—published 3/13/96, effective 4/17/96]
[Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 9/18/96]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 2/19/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 7/23/97, Notice 6/18/97—published 8/13/97, effective 9/17/97]
[Filed 1/23/98, Notice 12/17/97—published 2/11/98, effective 3/18/98]
[Filed 7/22/98, Notice 6/17/98—published 8/12/98, effective 9/16/98]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 3/5/99, Notice 12/16/98—published 3/24/99, effective 4/28/99]
[Filed 4/16/99, Notice 12/16/98—published 5/5/99, effective 6/9/99]
[Filed 4/30/99, Notice 12/16/98—published 5/19/99, effective 6/23/00]
[Filed 11/24/99, Notice 9/22/99—published 12/15/99, effective 1/19/00]
[Filed 1/5/00, Notice 8/11/99—published 1/26/00, effective 3/1/00]
[Filed 5/24/01, Notice 4/4/01—published 6/13/01, effective 7/18/01]
[Filed 8/31/01, Notice 7/25/01—published 9/19/01, effective 11/1/01]
[Filed 8/2/02, Notice 6/26/02—published 8/21/02, effective 9/25/02]

CHAPTERS 51 to 53
Reserved